IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

REVIEW PETITION NO.83 OF 2005
IN
WRIT PETITION NO.3189 OF 2004

The Property Owners' Association...Petitioner
(Ori.Intervenors)

Versus

Joseph Bain D'Souza & Ors. ...Respondents
(Ori.Petitioners)

And

State of Maharashtra ...Respondents
(Ori.Respondents)

Mr. S. Devarajan with Mr. N.V. Vamadalal and S.N. Vimadalal i/b. Vimadalal & Co., for the Petitioners.
Mr. Z. Jariwala i/b. Thakore Jariwala & Associate for the Original Petitioners
Mr. R.M. Sawant, Govt. Pleader for Respondent Nos. 1 and 3.
Mr. K.K. Singhvi, Senior Counsel with Mrs. S. Ajit Kumar for Respondent No.2.
Ms.Smita Ghadi i/b. S. Ashwinikumar for Intervenor.

CORAM: F.I. REBELLO &
DR. D.Y.CHANDRACHUD, JJ.
DATE : 15TH FEBRUARY, 2006.

P.C.

. This Review Application is by the original intervenors. They seek review of the judgment of this Court dated 17th October, 2005 in Writ Petition No.3189 of 2004.

2. Learned Counsel considering the pendency of the S.L.P. was asked as to whether it will be appropriate for this Court to consider the controversy. The learned Counsel submits that as the points raised over here have not been decided by the Apex Court it will not be open for him to raise the same before the Apex Court and consequently prays for hearing of the review petition.

3. The grounds for review as canvassed before us by the learned Counsel can be summed up thus:-

(a) The issue of maintainability should have been decided first. For that purpose various other submissions have been made which are contained in the brief note for review.

(b) The judgment is contrary to the law laid down by the Honourable Supreme Court for the reasons set out in the brief note for review.

(c) That there is an error apparent on the face of the record in as much as the Court has held that the Sukhtankar Committee Report only dealt with the dilapidated buildings.

(d) The learned Counsel also relied on the judgment of the Apex Court in Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. & Ors., (2003) 2 SCC 111 to contend that if the contentions raised are not dealt with, it would not be open to the petitioners to raise the issues in the pending S.L.P. before the Apex Court and the only remedy that the petitioners have is by filing an application for review.

4. We have heard learned Counsel for the Review Applicants. In so far as the contention No.1 is concerned, the limited issue is as to whether the issue of maintainability should have been first decided. The petition has now been finally heard and disposed of. All issues raised have been answered and decided subject to what is being contended in the Review Petition. The petitioners who were intervenors now cannot plead or contend before this Court that

any prejudice has been occasioned to them by the disposal of the petition. The aggrieved persons have already preferred a S.L.P., which is pending before the Apex Court. No case is, therefore, made out for reviewing the order on this ground.

5. The next ground urged is that the judgment is contrary to the law laid down by the Honourable Supreme Court. In other words what the learned Counsel contends is that the judgment suffers from non-consideration of the law as declared by the Apex Court. A perusal of the judgment will show that the issues involved were considered and answered. In these circumstances this would not be a ground which would be available to be raised by the intervenors before this Court. At the highest it will be open to them to raise the grounds if entitled to in law in the pending S.L.P.

6. The third ground as raised is that this Court had proceeded on the footing that the Sukthankar Committee report only deals with dilapidated buildings. The Sukthankar Committee report has been dealt with in para.12 of the judgment of this Court as also in para.39(iii). In other words the report was adverted to. If it is the contention of the petitioners that this Court did not correctly interpret the report of Sukthankar Committee that by itself is no ground for review as the issue involves consideration of the report.

7. In so far as the proposition canvassed based on judgment of the Apex Court in Bhavnagar University (supra), we need not address ourselves to it, as that is settled law by the Apex Court.

. In the instant case we have found that none of the grounds as urged would warrant exercise of our review jurisdiction. In the light of that there is no merit in the Review Petition, which is accordingly rejected.

(F.I.REBELLO, J.)

(DR. D.Y.CHANDRACHUD,.J)